

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK AT BROOKLYN

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IN RE:

District Court Case No. 15-0447

Bankruptcy Court Case No. 14-41678 (CEC)

Eric Hawkes Richmond

CHAPTER 13

Debtor.

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**MOTION TO RECONSIDER DENIAL OF MOTION TO VACATE FOR LACK OF
DUE PROCESS UNDER RULE 60(b)4 (void) AND FOR OPEN PUBLIC
HEARING FOR JUDICIAL NOTICE OF INCONTROVERTIBLE FACTS UNDER**

FEDERAL RULE OF EVIDENCE 201

AND FOR FINDINGS OF FACT AND CONCLUSIONS OF LAW

TITLE VII. JUDGMENT › Rule 59. New Trial; Altering or Amending a Judgment

STANDARD OF REVIEW IN 2ND CIRCUIT - HIGHER COURT

"[t]he major grounds justifying reconsideration are an intervening change of controlling law, the availability of new evidence, or the need to correct a clear error or prevent manifest injustice." *Virgin Atl. Airways, Ltd. v. Nat'l Mediation Bd.*, 956 F.2d 1245, 1255 (2d Cir.1992)

"reconsideration will generally be denied unless the moving party can point to controlling decisions or data that the court overlooked-matters, in other words, that might reasonably be expected to alter the conclusion reached by the court" - *Shrader v. CSX Transp., Inc.*, 70 F.3d 255, 257 (2d Cir. 1995)

COURT FINDINGS

1. The Court's PACER.gov line item dated September 1, 2016 is absent any actual paper, wording, discussion, findings of fact or conclusions of law.

CLEAR ERROR / MANIFEST INJUSTICE : FAILURE OF COURT TO DO ITS JOB

2. The court failed to issue a physical decision at all.
3. The court failed to address the allegation of violation of due process by the court, the dismissal of an appeal absent any notice or opportunity to be heard and without any findings of fact or conclusions of law or even a piece of paper to put into this motion to reconsider.
4. The court failed to make findings of fact or conclusions of law.
5. The dismissal of the appeal was a violation of due process.
6. The failure to address that allegation is another violation of due process.
7. Violations of due process is are clear errors and manifest injustice.

DEMAND FOR FINDINGS OF FACT AND CONCLUSIONS OF LAW

8. The failure of the court to provide findings of fact and conclusions of law upon which the one word decision is based is a violation of the movant's rights.
9. Movant demands that those rights be provided.

DEMAND FOR A HEARING PURSUANT TO FEDERAL RULE OF EVIDENCE 201

10. Federal Rules of Evidence ARTICLE II - JUDICIAL NOTICE, Rule 201 -

Judicial Notice of Adjudicative Facts mandates that the court hold the requested hearing:

- (b) Kinds of Facts That May Be Judicially Noticed. The court may judicially notice a fact that is not subject to reasonable dispute because it: (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.
- (c) Taking Notice. The court: ... (2) must take judicial notice if a party requests it and the court is supplied with the necessary information.
- (d) Timing. The court may take judicial notice at any stage of the proceeding.

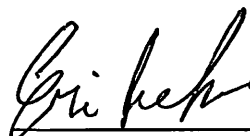
11. Movant demands an open public hearing wherein the following facts can be shown to be incontrovertible and necessary:

- a. The court received a letter requesting reassignment of the appeal.
- b. The court denied that request.
- c. The court then received that very same request with a stamp by Judge Brian Mark Cogan.
- d. The court then immediately dismissed the appeal without a written decision, findings of fact or conclusions of law.
- e. A motion to vacate due to lack of due process in that dismissal was dismissed on September 1, 2016 without a written decision, findings of fact or conclusions of law.

CONCLUSION: The court failed to address alleged and documented due process violation. This is a clear error and manifest injustice.

WHEREFORE: Movant demands that the court grant the instant motion to reconsider the denial of the motion to vacate and hold open public hearing for judicial notice of indisputable facts and that the court make findings of fact and conclusions of law regarding the September 1, 2016 decision and for such other and further relief as it deems just and proper.

Affirmed to this date: September 14, 2016 -
Lansing, Michigan



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